

ILLINOIS POLLUTION CONTROL BOARD

May 3, 1973

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 vs.) PCB 72-484
)
 JERRY PARKS, Respondent.)

Mr. Delbert Haschemeyer, Assistant Attorney General for the EPA
 J. Raymond Lawler, Attorney for Respondent

OPINION AND ORDER OF THE BOARD (by Mr. Henss)

Respondent Jerry Parks owns and operates a refuse disposal site located about 1 mile east of Marion, Illinois in Williamson County. An enforcement action was filed by the Illinois Environmental Protection Agency on December 11, 1972 alleging that Respondent had operated the site since July 1, 1970 without an Agency permit in violation of Section 21(e) of the Environmental Protection Act. Respondent is also charged with: open dumping of garbage in violation of Section 21(a) of the Act (8 counts); open dumping of refuse in violation of Section 21(b) of the Act and Rule 3.04 of the Rules and Regulations for Refuse Disposal Sites and Facilities (8 counts); failure to make necessary physical improvements before placing said facility in operation in violation of Rule 4.03 of the Rules; failure to confine dumping to smallest practical area in violation of Rule 5.03 of the Rules (16 counts); failure to properly restrict access to said facility in violation of Rule 5.02 of the Rules (16 counts); failure to provide sufficient equipment in operational condition in violation of Rule 5.05 of the Rules (16 counts); failure to spread and compact refuse in violation of Rule 5.06 of the Rules (16 counts); failure to provide proper daily cover in violation of Rule 5.07(a) of the Rules (16 counts); and, failure to provide proper final cover in violation of Rule 5.07(b) of the Rules (16 counts).

Attorney for Respondent filed a multitude of Motions and Objections that must be resolved before the substantive aspects of this case can be dealt with. As to Respondent's contention that the Agency Complaint failed to allege facts sufficient in law to charge Respondent with responsibility and liability, that the Complaint consists wholly of conclusions and failed to inform

Respondent of charges against him, that the Complaint failed to contain a concise statement of facts upon which Respondent is claimed to be in violation, we say that the Complaint is specific, concise, and complete to every requirement of our Procedural Rule 304 and Section 31 of the Act and accordingly deny Respondent's Motion.

Respondent's charge that the definitions of "refuse", "garbage", "sanitary landfill" as found in Section 3 of the Act and the words "operator's own activities" contained in Section 21(e) of said Act are vague, indefinite, uncertain, and violative of due process of law is also found to be lacking in merit and is denied. On the issue of constitutionality and delegation of legislative authority we have repeatedly held, as we do in this case, that the Act is valid and constitutional. Constitutionality of the Act has recently been upheld by the Illinois Appellate Court in EPA vs. Ford Ill. APP. 2d (Feb. 73).

Respondent also contends that he was forced to be a witness against himself by being called to testify as an adverse witness. That defense is not available in a civil case such as this one. If Respondent sincerely felt his testimony would be self incriminating in some criminal proceeding he should have pleaded the Fifth Amendment and refused to testify at the time he was called as a witness. Since Respondent failed to so plead, Motion for Dismissal on this ground is denied. Respondent's Motion for Dismissal on grounds that no jury trial was provided is also dismissed. The Act makes no such provision. Finally, Section 4(d) of the Act explicitly authorizes Agency personnel to enter at all reasonable times upon any private or public property for the purpose of inspecting and investigating alleged sources of pollution. We find no evidence in the record showing that Agency investigators violated this provision. EPA investigators came on the premises peacefully and at reasonable times for the purpose of viewing the area and taking pictures. Such conduct for the purpose of this civil hearing does not violate Respondent's Constitutional Rights. Therefore, we deny the Motion for Dismissal which alleges that evidence was illegally seized.

Testifying as an adverse witness for the Agency, Respondent Parks stated that the 2 acre disposal site is adjacent to a trailer park and that the location was partially under water most of the time. Access to the site is limited to a road constructed from old gob material. Parks, who jointly owns the site with his mother, contends that he did not operate a dump or landfill but rather a "recycling center" (R. 14) since he uses some of the materials that are dumped at the site. He did not deny that he has allowed dumping at the site (R. 15) and admitted observing tin cans, garbage (R. 17), bricks, wood and tar paper. Parks

stated that he had specifically requested that materials from the demolition of an old court house be dumped at his site (R. 18). In addition, Parks stated that after a building he owned had partially burned he dumped the remains at the site. Respondent admitted there was dumping almost over the entire area of the property (R. 21). He also admitted his site is not fenced (R. 21) and that he did not maintain any equipment at the site on a continuous basis. He explained that equipment has been at the site only 3 or 4 times within the previous year to level the refuse when site "gets full" (R. 22). When asked if dirt had been applied for daily cover as a normal practice, Respondent answered that he did not want any dirt because he was planning to use the site for commercial purposes (R. 23). Respondent later admitted that he did not know for what specific commercial purpose the land was to be used (R. 40). It was also admitted by Respondent that no final cover had been applied at the site (R. 23).

At one point Respondent claimed that he could not bury refuse at the site because the equipment would sink (R. 34). Respondent later conditioned this answer by stating "a little old light tractor might get in there but I wouldn't want to attempt it".

Respondent attempted to show some degree of compliance by stating that he now had a gate at the site and access was now restricted. Testimony was also introduced to show that Parks had been responsible for the covering and compacting of part of an unknown number of gob piles placed on the site years earlier by "some coal company" (R. 42). However, we note that Respondent's cover operation consisted of placing bricks and other refuse over the gob material (R. 44).

Agency investigators testified to making visits to the site on all specific dates alleged and claimed to have observed tin cans, paper, metal objects typical of household appliances, tree trimmings and logs, concrete, rubber, lumber, bottles and garbage, milk and egg cartons, food containers including baby food jars and other assorted materials from demolished buildings. Investigator Badding stated that he had never seen a fence around the site (R. 64) and had never had access restricted by a gate or a chain. Photographs taken by Agency investigators and introduced as evidence corroborate this testimony. Consecutive visits on July 7 and 8, 1971 and January 31, and February 1, 1972 show tree trimmings, appliances, tin cans, metal barrels, tires and tire rims, milk cartons, cinder blocks, a chair, bottles, metal pipe, chunks of concrete, and wood materials spread over large areas including water filled areas. Photographs taken on February 1, 1972 even show two dump trucks in the process of unloading at the site. On August 8, 1971 Agency investigators took photographs of the signs Respondent testified to placing at the site. These signs contained captions such as

"No dumping, cans, btls, garbage", "Construction Company dumping, no cans or bottles", "Dump only dirt, rocks, bricks & construction debris, no trash", and "Do not dump on lead in road, dump as far on the edges as possible, no cans, bottles or garbage allowed".

The Agency introduced as Exhibits 32 - 37 a series of letters written by Respondent to the Agency in order to show that Respondent has been aware of violations at his site since at least May 12, 1970. It is interesting to note that Respondent's letter constantly refers to "the dump" and do not contain any reference to a "recycling center". Investigator Badding testified that Respondent Parks had been sent a copy of the Rules and Regulations for Refuse Disposal Sites and Facilities (R. 132) but could not remember on what date they were sent.

Respondent raised several defenses:

- a. that he could not stop indiscriminate dumping of garbage and refuse by outsiders even with gates,
- b. that he was doing the State a favor by covering the gob piles with demolition materials,
- c. that other polluttional activities near his site were as bad or worse than his own, and
- d. at a recycling center it would not be fair to have to cover reuseable materials such as wood and bricks.

We approve Park's goal of covering the gob material. Our disagreement is with his method. It is our belief that Respondent only recently decided to classify his site as a "recycling center" and overlooked Rule 5.10 of the Rules and Regulations for Refuse Disposal Sites and Facilities. This Rule allows salvage operations under the following conditions:

- a. all salvage operations be conducted in a sanitary manner,
- b. salvage operations be confined to an area remote from the operating face of the fill,
- c. salvage operations shall not interfere with, or otherwise delay the fill operation, and
- d. all salvage materials shall be removed from the landfill site daily, or properly stored such that they will not create a nuisance, rat harborage, or unsightly appearance.

Respondent has not complied with any of these conditions.

It is our Opinion that Respondent is guilty of all violations alleged in the Complaint except that portion pertaining to application of final cover. Agency photographs taken on November 8

and December 20, 1972 reveal refuse items not readily discernible in previous photographs. We believe that the operation may be continuing and therefore the final cover rule may not be applicable.

We find it inexcusable that Jerry Parks has ignored repeated Agency warnings about violations at his refuse disposal site for the past 2 1/2 years. His references to "doing the State a favor" by covering his gob piles, having violators arrested if they are caught dumping trash on his site, having his father keep an eye on the site "when he is able", his classification of the operation as a recycling center, and his two photographs showing a few bricks deposited in low spots at the nearby trailer park are feeble efforts at mitigating the impact of the violations.

Respondent Parks has attempted to show this Board that compliance with our regulations will create a financial hardship. As foundation for this claim, Parks related the details of his father's illness, his brother's unemployment and his own financial obligations. In view of the fact that Parks chose to ignore our Regulations for the past 2 1/2 years, we believe any hardship now claimed must be viewed as self imposed.

Considering all the facts of this case we believe that a cease and desist order is required along with a penalty of \$500.

ORDER

It is the Order of this Board that:

1. Jerry Parks shall pay to the State of Illinois by May 25, 1973, the sum of \$500 as penalty for violations found in this proceeding. Penalty payment by certified check or money order payable to the State of Illinois shall be mailed to: Fiscal Services Division, Illinois EPA, 2200 Churchill Road, Springfield, Illinois 62706.
2. Respondent shall immediately cease and desist from all violations found in this Opinion. The site shall be closed to further dumping and final cover shall be applied within 60 days of this Order.
3. Operations at this site shall not be started again until Respondent has obtained an Agency permit for his site.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order was adopted this 3RD day of May, 1973 by a vote of 4 to 0.



